

REMARKS

This application has been reviewed in light of the Office Action dated April 28, 2009. Claims 1, 2, and 4-13 are presented for examination, of which Claim 1 is in independent form. Claim 3 has been cancelled, and its recitations incorporated into Claim 1; these actions are taken without prejudice or disclaimer of subject matter, and in particular, it is noted that this is done to conform the scope of Claim 1 to that which has been allowed in the counterpart European patent application (now issued as European Patent 1 670 993, copy attached), and not because this narrowing of Claim 1 is in any way necessary to render that claim patentable (see arguments below). Claims 2 and 4-12 have been amended as to matters of form, and Claim 13 has been added to provide Applicant with a more complete scope of protection. Applicant submits that no new matter has been added. Favorable reconsideration is requested.

Claim 1 was objected to because of a lack of antecedent basis for the phrase “each of its two ends” at lines 5 and 6. Applicant has amended Claim 1 to recite --each of two ends of the spring section-- and submits that the formal objection has been obviated.

Claims 9-12 were objected to as being in improper multiply dependent form. Applicant has amended Claims 9-12 to eliminate multiple dependencies and submits that the objection has been obviated.

Claims 6-8 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action asserts that the phrase “preferably semicircular” recited in Claim 6 renders that claim indefinite. Applicant has carefully reviewed and amended Claims 6-8 as deemed necessary to ensure that they conform fully to the requirements of Section 112, second paragraph, with special attention to the points raised

in paragraphs 3 and 4 of the Office Action. It is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

Claims 1-5 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 3,623,622 (*Sullivan*). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sullivan*; and Claim 8 was rejected over *Sullivan* in view of U.S. Patent 5,435,455 (*Priess*). Cancellation of Claim 3 renders its rejection moot. Applicant submits that independent Claim 1, together with the claims dependent therefrom, are patentably distinct from the cited references for at least the following reasons.

Claim 1 is directed to a cover for a manhole top with a cover body and with at least one locking means arranged on the cover body. The locking means has a spring section and, arranged thereon, an engagement section that can be brought into engagement with a part of a frame. The spring section is attached by each of two ends of the spring section to the cover body and is otherwise separated from the cover body. The engagement section is arranged between the two ends of the spring section. The spring section is designed as an annular body, which is attached to the cover body by a retaining section that essentially joins the two ends of the spring section.

Among other notable features of the cover of Claim 1 are the locking means having a spring section. The spring section is attached by each of its two ends to the cover body and is otherwise separated from the cover body. As discussed in the second full paragraph of page 2 of the specification of this application: “On account of the inventive construction, the spring section functions in the manner of a leaf spring that is fixed at both ends. It has become evident in this context that the inventive construction permits

realization of a locking system that functions with particular effectiveness while at the same time being especially easy to use.”¹

Sullivan relates to safety locking closures for containers such as bottles. At pages 2 and 3, the Office Action cites Fig. 10 of *Sullivan* to assert that the cap lid 14 and the downwardly protruding ridge 65 shown in Fig. 10 of *Sullivan* correspond, respectively, to the locking means and the spring section recited in Claim 1. The cap lid 14 forms a somewhat ring-shaped frame receiving a lock disc 20, and together the lid 14 and disc 20 form a cover which is hinged at a cap base 12 further defining a frame. (See, e.g., Figs. 1-8.) However, as described in *Sullivan* at column 3, lines 5-33, the protruding ridge 65 extends from the underside of the lock disc 20 along its periphery and acts as a guide in order to urge a swivel lock arm 56 that is hinged about a web 57 from a locked position (Fig. 9) to an unlocked position (Fig. 10). To do this, the cover must be rotated around its central axis 70 whereby an inwardly protruding end 68 of the ridge 65 comes into contact with an upper end 58 of the swivel lock arm 56 (Fig. 9). Upon further rotation around the central axis 70 the upper end 58 of the swivel lock arm 56 moves to the radially more outwardly protruding portions of the ridge 65, whereby the upper end 58 of the swivel lock arm 56 is urged radially outwardly away from the central axis (Fig. 10). The result is that the tooth 26 provided at the lower end of the swivel lock arm 56 is moved inwardly and therefore withdrawn from an aperture 15 provided in the cap base 12 (Figs. 8 and 10).

¹/ It is to be understood that the scope of the claims is not limited by the details of this or any other feature or benefit that may be referred to.

Thus, and as is described at column 3, lines 5-33, element 65 is merely a protruding ridge of the lock disc 20 and is not even a part of the cap lid, the alleged locking means.

In order to achieve the aforementioned locking/unlocking functions, the ridge 65 must be completely fixed along its entire length to the underside of the lock disc 20. Apparently, any locking/unlocking is made possible by virtue of the swivel lock arm 56. Therefore, it is plain for this reason as well that protruding ridge 65 cannot properly be deemed to be the recited spring section.²

Moreover, even if the protruding ridge 65 were assumed for argument's sake to correspond to the "spring section" of Claim 1 - which however it does not - *Sullivan* would still fail to suggest a spring section that "is otherwise separated from the cover body" as set forth in Claim 1.

Nothing has been found in *Sullivan* that would teach or suggest "locking means having a spring section", much less a spring section that is "attached by each of two ends of the spring section to the cover body and is otherwise separated from the cover body", as recited in Claim 1.

Accordingly, Applicant submits that Claim 1 is clearly allowable over *Sullivan*.

A review of the other art of record has failed to reveal anything that, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as applied

²/ It will be noted that the foregoing points apply equally well to Claim 1 in its original form, and for at least this reason Applicant believes that the incorporation of Claim 3 into Claim 1 was not necessitated to render the latter claim allowable.

against Claim 1. Therefore, Claim 1 is respectfully submitted to be patentable over the art of record.

The other claims in this application depend from Claim 1, and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, individual consideration or reconsideration, respectively, of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Leonard P. Diana/

Leonard P. Diana
Attorney for Applicant
Registration No. 29,276

FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, New York 10104-3800
Facsimile: (212) 218-2200

FCBS_WS 3938923v1